

Illinois Program Improvement Plan
November 2010
Revision 1-25-11

**NPDES Permitting for
Concentrated Animal Feeding Operations**

Objective 1¹: All Large CAFOs that discharge or propose to discharge possess NPDES permits. This objective addresses U.S. EPA's CAFO program review findings related to issuance of NPDES permits to CAFOs as required under the NPDES regulations².

Approach:

1. By February 2011, Illinois EPA CAFO permit managers will confer with all Region 5 states, including Minnesota and Michigan, to learn about the systems and staffing those States employ to authorize CAFOs under general permits.
2. Illinois EPA will establish a schedule for making a completeness determination and taking preliminary and final action on all permit applications that were pending as of November 30, 2010. By February 15, 2011, Illinois EPA will provide a draft of the schedule to U.S. EPA for approval or approval with modification. Subsequent to the approval, Illinois EPA will provide a monthly status report on each application to U.S. EPA. The frequency of such reports may be adjusted after the initial six months by mutual agreement.
3. By August 2011, Illinois EPA will report on the outcome of a re-investigation of the 45 cases in which Illinois EPA determined that an applicant did not require a permit. The report will include conclusions and, as appropriate, recommendations for further action.
4. Illinois EPA will establish a standard operating procedure, with timelines, for making a completeness determination and taking preliminary and final action on permit applications received on and after December 1, 2010. The SOP will provide for final action not more than 180 days after receipt of an application. Under the SOP, Illinois EPA will respond to all

¹ An objective is an expression of a desired state. Objectives in this document are not commitments as that term is used in the November 1, 2010, *Memorandum of Agreement (MOA) Between the U.S. EPA and Illinois EPA Concerning Oversight and Improvement of Performance in Administering Federally Authorized, Delegated and/or Approved Illinois Environmental Programs and Work Sharing for Those Programs*.

² See the September 2010 *Initial Results of an Informal Investigation of the National Pollutant Discharge Elimination System Program for Concentrated Animal Feeding Operations in the State of Illinois*, available at: <http://epa.gov/region5/illinoiscafo>.

incomplete applications with a notice of incompleteness (NOI) delineating **the** deficiencies in the application and requiring a response within 30 days. Illinois EPA will copy U.S. EPA on all NOIs. The SOP will provide that Illinois EPA will issue a violation notice (VN) under section 31 of the Illinois Environmental Protection Act or request U.S. EPA to issue an information collection order under section 308 of the Clean Water Act for any applicant who has not responded or when Illinois EPA finds that the application is still incomplete after issuance of the NOI. By February 2011, Illinois EPA will provide a draft of the SOP to U.S. EPA for review and approval or approval with modification.

5. U.S. EPA will issue information collection orders to CAFOs that have submitted incomplete applications to Illinois EPA and are not subject to federal enforcement (federal enforcement orders require a complete permit application). Illinois EPA will refer such CAFOs to U.S. EPA within 30 days after the deadline Illinois EPA sets in a NOI letter or VN to the applicant. U.S. EPA will issue the information collection orders within 60 days after receipt of a complete referral from Illinois EPA.

6. By April 2011, Illinois EPA will seek commitments through which the Illinois Department of Agriculture and the Illinois Department of Public Health will routinely provide information about CAFOs to Illinois EPA.

7. Illinois EPA has posted job announcements for three new field positions and three new permit positions to work full time on the NPDES CAFO program. Illinois EPA will use best efforts to fill the positions by August 2011. By August 2011, Illinois EPA will provide a preliminary workload assessment to U.S. EPA. The assessment will identify the number of full-time employees required to implement an effective CAFO permitting, compliance evaluation, and enforcement program for a range of estimates of the regulated universe. Illinois EPA will provide the draft assessment to U.S. EPA for review. Illinois EPA will prepare a final workload assessment in conjunction with the production of the statewide CAFO inventory. The final assessment will identify staff distribution by function and geographic area of responsibility.

8. Newly-hired Illinois EPA CAFO permit writers will complete the NPDES Permit Writers' Course and the Nutrient Management Plan (NMP) Training for Federal and State Permit Writers, Inspectors, and Technical Assistance Providers within six months after their start date. Existing permit writers will complete the NMP Training within 30 days after it becomes available on-line. By March 2011, U.S. EPA will train existing permit writers on the unpermitted discharge prohibition and duty to apply for a permit in the CWA and federal regulations. U.S. EPA will train newly-hired permit writers within six months after their start date.

9. Within 30 days after publication of amendments to title 35 of the Illinois Administrative Code, subtitle E (i.e., the Illinois rules for agriculture-related pollution), Illinois EPA will inform

the owner of each Large CAFO in the State's inventory, in writing, about the duty to apply for a permit and the potential consequences for failing to apply. Illinois EPA will provide a draft of the letter to U.S. EPA for review and approval or approval with modification.

10. Within 60 days following publication of amendments to 35 Ill. Adm. Code Subtitle E, Illinois EPA and U.S. EPA will complete a joint evaluation of general permit ILA01 to identify conditions that Illinois EPA could modify, consistent with the 2003 and 2008 federal rules for CAFOs, to streamline the process for review of NMPs and incorporation of NMP terms into the permit. For any conditions so identified, Illinois EPA will formally ask the public to comment on the draft modifications not more than 120 days after publication of amendments to 35 Ill. Adm. Code, subtitle E.

11. Within 60 days following publication of amendments to 35 Ill. Adm. Code Subtitle E, Illinois EPA and U.S. EPA will jointly explore other methods for streamlining the Illinois EPA process for review of NMPs and incorporation of NMP terms into permits. Such methods include, but are not limited to, use of Manure Management Planner or other nutrient management planning software. Illinois EPA will effectuate any streamlining decisions not more than 120 days after publication of amendments to 35 Ill. Adm. Code, subtitle E. Illinois EPA may request support for implementation of the streamlining decisions.

12. Within 30 days after Illinois EPA authorizes a CAFO under a permit, Illinois EPA will enter data for the CAFO into the Integrated Compliance Information System (ICIS).

Indicia of Progress³: For applications submitted prior to March 31, 2011, Illinois EPA completes the following by June 30, 2011: issue permits to the applicants, post draft permits or notices of coverage for public comment, or refer the CAFO for formal enforcement or an information collection order. For other applicants, Illinois EPA takes final action as detailed in the SOP contemplated in Approach 4 in this section.

Objective 2: U.S. EPA approves amendments to 35 Ill. Adm. Code, subtitle E, which (1) reflect the 2003 and 2008 revisions to the federal regulations for CAFOs and (2) require the owners or operators of all Large CAFOs to register with Illinois EPA. This objective addresses U.S. EPA's CAFO program review findings related to administrative rules for CAFOs as well as technical standards for nutrient management by Large CAFOs.

³ Indicia of progress are intended as measure the progress that Illinois is making to meet the objectives established in this document. Indicia are not commitments as that term is used in the November 1, 2010, MOA.

Approach:

1. Illinois EPA provided draft amendments to 35 Ill. Adm. Code, subtitle E, to U.S. EPA for review on December 1, 2010. U.S. EPA provided comments and recommendations on January 14, 2011. Illinois EPA will revise the draft to resolve U.S. EPA's comments and provide the revised draft to U.S. EPA by February 28, 2011. U.S. EPA will provide any remaining comments and recommendations within 15 days of receipt.
2. Within 90 days after receipt of U.S. EPA's comments and recommendations on the revised draft, Illinois EPA will resolve U.S. EPA's comments and file the amendments as a proposed amendatory rulemaking with the Illinois Pollution Control Board. Illinois EPA and U.S. EPA program managers will elevate issues to agency water directors or higher as may be required to resolve U.S. EPA's comments within the 90-day period contemplated here.
3. As appropriate, U.S. EPA will communicate its position on the amendments to the Board as the Board decides whether to propose the amendments for the purpose of requesting public comment.
4. If Illinois EPA requests, U.S. EPA will provide support to organize and respond to public comments on the proposed amendments.
5. Within 45 days after the amendatory rulemaking becomes effective, Illinois EPA will submit the final amendments to U.S. EPA for approval under 40 C.F.R. §123.62.
6. Within 120 days after the effective date of the amendatory rulemaking, Illinois EPA will revise its permit application forms and formally ask the public to comment on draft modifications to general permit ILA01 as appropriate based on the amendments.

Indicia of Progress: U.S. EPA does not have comments on draft amendments that Illinois EPA submits to the Illinois Pollution Control Board. The Board proposes amendments within 60 days after receipt of the proposed amendatory rulemaking from Illinois EPA. Illinois adopts the amendments within six months after proposal. Illinois implements the amendments upon becoming effective. U.S. EPA approves the amendments within 90 days of receipt.

NPDES Compliance Monitoring and Enforcement for CAFOs

Objective 1: To detect and report all violations and sufficiently document them in order to support federal enforcement. This objective addresses U.S. EPA's CAFO program review findings related to developing and maintaining a comprehensive inventory of CAFOs and evaluating their regulatory status, revising the inspection processes to determine and track

CAFOs requiring NPDES permits, and developing and implementing SOPs for responding to CAFO-related citizen complaints.

Approach:

1. Illinois EPA will implement a short-term strategy for evaluating AFOs that are likely to be Large CAFOs. The strategy includes the following:

a. The creation of an interim NPDES inspection list of 25 likely large CAFOs using existing lists of known and potential CAFO sites developed by Illinois EPA regional offices, permit applications, citizen tips and complaints, and information from U.S. EPA, the Illinois Department of Agriculture and the Illinois Emergency Management Agency. Illinois EPA will provide the list to U.S. EPA, including location data, no later than February 28, 2011.

b. Illinois EPA will develop a CAFO NPDES inspection/evaluation standard operating procedure by February 28, 2011. The SOP will enable the inspector to determine whether CAFOs discharge or propose to discharge. The SOP should include pre-inspection preparation, access procedures, site visit conduct, and inspection timing, sampling, and post inspection procedures including report timing, format, and content (including discharge documentation). Illinois EPA will provide the SOP to U.S. EPA for review and approval or approval with modification.

c. Illinois EPA will organize an initial training for all of its field inspectors and office enforcement staff so they can effectively evaluate CAFOs that are on the interim NPDES inspection list. By February 1, 2011, Illinois EPA will provide a proposed agenda to U.S. EPA for approval or approval with modifications. U.S. EPA will review training materials. Training will cover the approved SOP identified in Paragraph 1(b) including pre-inspection preparation, inspection conduct, post-inspection follow-up and documentation, review of compliance data (i.e., overflow reports, discharge monitoring reports, Single Event Violations (SEVs), wet weather significant noncompliance (SNC) determinations, and complaints), new violation processing procedures instituted under this program improvement plan, and identification of new facilities/discharges. By March 2011, U.S. EPA and Illinois EPA compliance and enforcement staff will conduct this training. The Illinois Attorney General's Office staff will be invited to participate.

d. By February 28, 2011, Illinois EPA will develop a plan to create and maintain a comprehensive inventory of Large CAFOs. Illinois EPA will enter and maintain the inventory in the Integrated Compliance Information System (ICIS). The inventory will include potential CAFO sites identified by Illinois EPA regional offices, permit applications, citizen tips and complaints, U.S. EPA, the Illinois Department of Agriculture, and the Illinois Emergency Management Agency. The plan may make use of a Geographic Information System-based pilot inventory currently being developed for seven high profile counties. Illinois EPA will provide the plan to U.S. EPA for review and approval or approval with modification.

e. Illinois EPA will perform 25 initial NPDES evaluations by June 1, 2011, to determine whether the facilities discharge or propose to discharge, including during wet weather. Illinois EPA will perform an additional 25 NPDES evaluations by June 1, 2012.

f. At its existing Compliance Group monthly meetings, Illinois EPA will review the findings and documentation of all NPDES evaluations for: a determination of whether the facility meets the definition of a CAFO, areas of non-compliance, wet weather SNC determinations, violations detected, documentary evidence, and recommendations for correcting the violations.—Beginning in May 2011, Illinois EPA and U.S. EPA will confer monthly to review the findings and documentation of all CAFO noncompliance cases beginning with those initiated in 2009.

2. By June 1, 2010, Illinois EPA will develop and provide to U.S. EPA a long-term CAFO NPDES training curriculum for all staff conducting CAFO NPDES inspections. The curriculum will be completed by all existing CAFO inspectors and their first-line supervisors by August 2011. New staff will complete the curriculum within six months of their start date, and prior to conducting inspections independently. The curriculum will cover all State and federal CWA-related matters. At a minimum, it will include the requirements outlined in Attachment A (i.e., inspector training required under U.S. EPA internal order 3500.1).

3. By June 2011, Illinois EPA will develop a citizen complaint SOP and database for AFOs/CAFOs. The SOP will provide for a written report on investigation results to the complainant. The database will include a field recording the response to the complaint. The SOP will also provide instruction for ensuring 24-hour spill/release response capability which includes on-site presence of an NPDES trained inspector, sampling capability, and equipment to ensure that spills/releases from AFOs are documented and assessed to determine if the facilities are CAFOs and require NPDES permits. The SOP will include assurance that laboratory capabilities and services are sufficient to complete data analysis within prescribed holding times for pollutants of concern. The SOP must specifically address maintenance of those capabilities for those events which occur at night, on weekends, and on holidays.

4. Illinois EPA will develop an annual site-specific CAFO inspection plan which ensures NPDES inspection at a minimum of 20 percent of all permitted CAFOs, consistent with U.S. EPA's National NPDES Compliance Monitoring Strategy. Illinois EPA will provide the plan to U.S. EPA by September 1 of each year for approval.

5. During FY 2011, U.S. EPA will conduct oversight inspections of a minimum of five Illinois EPA NPDES CAFO inspections to evaluate the effectiveness of the Illinois EPA inspection program. U.S. EPA inspectors will document their findings, and evaluate the thoroughness and scope of prior Illinois EPA inspections as well as the appropriateness of the record-keeping and reporting associated with the inspections. U.S. EPA will provide copies of these inspection

reports to Illinois EPA within 60 days of completion. U.S. EPA will also conduct independent inspections at additional CAFOs with suspected wet weather discharges. U.S. EPA will invite Illinois EPA participation where appropriate. U.S. EPA will initiate any appropriate follow-up enforcement consistent with existing State/U.S. EPA enforcement communication agreements and the Environmental Performance Partnership Agreement.

Indicia of Progress: Illinois EPA creates and maintains in ICIS a consolidated inventory of Large CAFOs. The inventory is easily accessible to all Illinois EPA staff and the public. Illinois EPA conducts NPDES evaluations at 25 potential Large AFOs by June 1, 2011 and a total of 50 by June 1, 2012 consistent with approved SOPs. Illinois EPA implements approved annual inspection plans for permitted CAFOs consistent with the National Compliance Monitoring Strategy. Illinois EPA implements a satisfactory training program for inspectors. Illinois EPA responds to all citizen complaints and emergency CAFO-related discharges in a timely manner. Illinois EPA identifies and records 100 percent of Single Event Violations and all wet weather Significant Non-Compliance (SNC) in ICIS.

Objective 2: To properly track and efficiently resolve newly-identified violations. This objective addresses U.S. EPA's CAFO program review findings related to timely and appropriate enforcement addressing noncompliance by CAFOs and the requirement that all CAFOs that discharge or propose to discharge must apply for an NPDES permit.

Approach:

1. Illinois EPA's Bureau of Water will revise its Enforcement Response Guide (ERG) in a manner designed to improve the timely and appropriate response to violations detected at CAFOs and ensure a prompt return to compliance⁴. Illinois EPA will submit the revised ERG to U.S. EPA by February 1, 2011. The ERG will require all Large CAFOs to apply for and obtain an NPDES permit where the CAFOs discharge or propose to discharge. The ERG will require all Medium AFOs to apply for and obtain a permit where the AFO meets the definition of a CAFO. In addition, the ERG will reflect the wet weather SNC policy in the determination of SNC as well as the appropriate enforcement response. Illinois EPA will submit the ERG to U.S. EPA for review and approval or approval with modifications. Illinois EPA will fully adopt and implement the ERG within 30 days of U.S. EPA approval or approval with modifications. All staff working on AFO/CAFO issues will be trained and the revised ERG will be implemented by May 2011.

2. By May 1, 2011, Illinois EPA will issue violation notices (VNs) for all significant noncompliance detected at CAFOs, within 180 days of Illinois EPA becoming aware of the

⁴ The ERG should include systems and procedures which assure timely and appropriate response to violations detected at other sources as well.

alleged violation, pursuant to Section 31(a) of the Illinois Environmental Protection Act (Act). The VN will contain a recommended remedy and schedule for implementation as appropriate. CCAs will be accepted when they bind the respondent to the requirements and timeframes recommended in the VNs. If Illinois EPA is unable to negotiate an acceptable CCA within 60 days of issuing the VN, Illinois EPA will refer the matter to the Illinois Attorney General's office. For conditions that constitute an imminent or substantial endangerment to human health, the environment or property, Illinois EPA will immediately refer the matter to the Illinois Attorney General's office pursuant to Section 43 of the Act.

3. In cases where the facility does not respond to the VN or proposes a remedy that is less effective than the remedy proposed by Illinois EPA, Illinois EPA will immediately complete the necessary actions under Section 31 that will allow Illinois EPA to formally refer the matter to the Illinois Attorney General's office or the State's Attorney of the county in which the alleged violation occurred. Simultaneously, Illinois EPA will refer the case to its existing Enforcement Decision Group for pre-referral consideration of the case.

Indicia of Progress: Illinois EPA consistently follows the approved ERG. All Compliance Commitment Agreements are finalized within 60 days of the VN. No State-lead enforcement cases result in U.S. EPA taking additional action to resolve the same violations.

Objective 3: To assure that existing, unresolved enforcement matters are properly tracked and efficiently resolved. This objective addresses U.S. EPA's CAFO program review findings related to timely and appropriate enforcement addressing noncompliance by CAFOs.

Approach:

1. Beginning in January 2011, Illinois EPA program and legal managers, Illinois Attorney General's office managers, and U.S. EPA program and legal managers will conduct a quarterly docket review of all referred CAFO matters and all open federal enforcement cases. Participants will agree on the lead agency, path to resolution (including target dates), appropriate penalty resolution, and desired results. Illinois EPA will document decisions.
2. By July 2011, U.S. EPA legal staff and management will meet with the Illinois Attorney General's office and Illinois EPA's legal staff and management to discuss legal issues and strategy with respect to CAFO litigation and enforcement, including U.S. EPA penalty policies.
3. Illinois EPA will provide a report by no later than the 15th of each month. The report will reflect the following activities completed during the preceding month. The reports will include the following:

- a list and electronic copy of the report for each AFO facility evaluated under Objective 1, Approach 1(e), to determine whether the facility is subject to NPDES permitting requirements;
- the disposition of complaints/spills/releases responded to under Objective 1, Approach 3;
- the results the Compliance Group's determinations under Objective 1, Approach 1(f);
- a list of all AFO related citizen complaints/spills/releases received in the preceding month under Objective 1, Approach 3 and the disposition of the cases;
- a list of facilities evaluated by the EDG and a description of actions taken with regard to those facilities, including copies of any referrals to the Illinois Attorney General's office or written compliance determinations; and
- a list of all NPDES enforcement matters referred to the Illinois Attorney General's office or that are before the Illinois Pollution Control Board and a written summary of the status of the cases.

The frequency of reports may be adjusted after the initial six months upon agreement by Illinois EPA and U.S. EPA.

Indicia of Progress: All pending matters meet agreed-upon schedules for action and resolution. Decisions affecting case progress are made expeditiously, and barriers are removed. Newly-referred matters placed on the docket progress appropriately. Monthly reports are submitted timely and contain all required information.